South Carolina House of Representatives

Legislative Update & Research Reports

Robert J. Sheheen, Speaker of the House

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CONTENTS

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Legislative Update

Introduction

Welcome back!

Welcome to the fourth volume of *Legislative Update & Research Reports,* a regular publication designed to assist the members of the South Carolina House of Representatives.

Legislative Update is published by the House Research Office and is prepared through the cooperative efforts of the staffs of the House standing committees, who generously lend their expertise to the project.

There is also assistance from staff members in the various government offices, agencies, boards and commissions. Without their help this publication would not be possible.

Information

Additional information and assistance also come from the National Conference of State Legislatures (NCSL) and the Council of State Governments (CSG), the two national organizations which serve state governments and their legislatures.

Particular mention should be made at this point of the excellent resources and generous help given by South Carolina's own State Library, located right here in Columbia.

What the Update provides House members

The basic purpose of the *Update* is to assist members in performing their duties as elected members of the South Carolina General Assembly. The material in the *Update* is written in a brief, informal manner, suitable for adapting to newsletters, speeches and talks, and other presentations House members may be called upon to make as part of their service.

The material in the *Update* is kept as factual and objective as possible. Rule 3.7 of the House is strictly observed in preparing this publication. *Legislative Update* provides five types of information to House members:

1) Brief, non-technical summaries of introduced and pending legislation as it goes through the Assembly;

2) More in-depth "research reports" probing the background, development and possible outcome of issues facing the House;

3) Information on House activities, such as staff changes, telephone numbers, and meetings;

4) Periodic reviews of editorial commentary in the state's newspapers about the efforts and activities of the General Assembly;

5) General information about the Legislature or South Carolina, especially that which might be useful to your constituents.

The *Legislative Update* is here to serve you, as members of the South Carolina House of Representatives. The *Update* is published by the Office of Research, Sam Carter, Executive Director; it is edited by Michael Witkoski. If the *Update* or the Research Office can be of assistance to you, please let us know. The Office is located in Suite 324 of the Blatt Building; Telephone 734-3230.

Prefiled Bills Ready For Members

A number of bills have been prefiled and are awaiting House members as the 1987-88 session begins. The *Legislative Update* has prepared brief summaries of the bills most likely to attract general, or state-wide interest, and begins presentation of them with this issue.

Because of the number of prefiled bills, and the fact that bills continue to be introduced throughout the session, not all proposed legislation can be dealt with here. Bills summarized are those which constituents are likely to have heard about through the media, or which have widespread impact.

For convenience, bills are grouped according to general subject matter. Those items which did not get included in this week's *Update* will show up at some later date.

Aging

Increase homestead exemption (H.2026, Rep. Pat Harris). The homestead exemption is available to persons who are over 65 years old, are handicapped, or who are blind. Presently homeowners in those categories can deduct the first $20,000 in fair market value off their house before paying taxes. This bill proposes to increase that amount to $30,000.

Bingo license fees to benefit elderly (H.2031, Rep. Pat Harris). This bill would mandate that all funds collected from the bingo license fees in South Carolina would go to the Alternate Care for the Elderly Fund.

Marriage license fees to benefit elderly (H.2032, Rep. Pat Harris). This bill would also aid the Alternate Care for the Elderly Fund. Specifically it would add an additional $10 to the cost of a marriage license in the State, and this extra money would be dedicated to the fund.

This could add up to a tidy sum. According to the latest issue of the state *Statistical Abstract,* there were 55,357 marriages in South Carolina during 1984 (tabulated by county where license was issued). This gave a marriage rate of 16.3 per 1,000 population. (During the same time, there were 13,674 divorces and annulments in South Carolina, or a rate of 4.1 per 1,000; not as good a source of potential income on a per capita basis.)

One-time increase in base for retirees (H.2041, Rep. P. Harris). A measure that would provide a one-time increase in the base benefit amount for retired members of the South Carolina retirement system. If approved, it would add $1.00 for each year of service, and also $1.00 for each full year benefits have been received under the system. Before the increase could go into effect, however, the retirement system would have to approve it as "actuarially sound."

Children and Families

Child support payments (H.2009, Rep. Ferguson). This bill would amend 20-7-5 of the *Code* to limit monetary payments of child support to no more than 30% of a person's after tax pay. In addition, however, the Family Court might order the person to provide in-kind support such as clothing appropriate for Christmas, school opening, or the spring school holidays.

Child care facilities (H.2014, Rep. Wilkins). Currently the Department of Social Services must go to the circuit courts to seek an injunction on the operation of child day care centers. This bill would allow them to appear before the Family Court to get an injunction for one of the following reasons:

1) The center is operating without a license or registration;
2) Violations which threaten serious harm to the children;
3) Repeated violations of DSS rules and regulations.

Visitation rights (H.2046, Rep. Alexander). Under this legislation the visitation rights of non-custodial parents would receive some additional protection. If the visitation rights awarded by the court are not followed by the parent who has custody, then the other parent may petition the court for a contempt order.

Education

English the state official language (H.2034, Rep. Foxworth). This bill proposes an amendment to the state constitution to the effect that the "English language is the official language of the State of South Carolina." No other languages could be required to be used--as on ballots, etc.--except for two purposes: teaching speakers of non-English languages to learn English; making native English speakers fluent in foreign languages.

English was recently declared the "official language" of the state of California in a referendum held during the general election. In states such as California, or Florida, where there is a large Hispanic population, some people have expressed the fear that non-English speakers will lead to a polarization of cultures--as is the case, they say, in Quebec, Canada.

Others say that the English language needs no protection to survive—after all, it's gone from being the tongue of a relatively small island to the most important language in the entire world. Instead, what's needed is more money to fund English classes for immigrants. Studies have shown that the overwhelming majority of those coming to this country want to learn English as soon as possible.

One question: how shall "English" be defined? If we mean "standard English," does that include pronunciation? If it does, what might happen to our citizens who grew up reading the *New Sand Korea* on the ba'try? (Or is that standard English and the rest deviant?)

Raising school attendance age (H.2055, Rep. Kirsh). This bill would raise from 16 to 17 the mandatory school attendance age.

Quick: name the original Lords Proprietors (H.2062, Rep. Aydlette). Currently a course in the history of the state is required in public schools. This bill would make it more specific: South Carolina history would be taken in the ninth grade. The course would be two semesters and would carry one credit.

Now: just who were the original eight Lords Proprietors? (Let's see: Dopey, Sneezy, Grumpy, Bashful, Doc....) For the correct answer, see page 19.

Environment

The end of the billboard (H.2004, Rep. Aydlette). This bill proposes repealing Title 57, Chapter 25, articles 3, 5, and 7, relating to billboards. Once those parts of the *Code* were repealed, there could be no more billboards "visible from any place on the main-traveled highway or street." Persons owning billboards would have to remove one-fifth of them each year, until all were gone after a five-year period. Now you see them/ Now you don't/ Say Goodbye to/ Burma Shave.

Container legislation (H.2051, Rep. Simpson). Popularly known as the "bottle bill," this legislation aims at reducing pollution, conserving energy and enhancing the environment through reusable containers for beverages.

The beverages concerned are beer, malts, mineral waters, soda water and soft drinks. All would have to be packaged in containers with a minimum refund value of five cents. Customers could return the containers to dealers or redemption centers, who would then return them to distributors.

The Alcoholic Beverage Control Commission would be in charge of certifying containers as suitable; receiving and considering applications for redemption centers; and reviewing the operations of these centers.

No airboats (H.2071, Rep. Altman). This bill would prohibit the use of airboats on waters from the freshwater-saltwater dividing line to the sea.

Generally this line follows US Highway 17 and the old Seaboard Railroad as they travel down the coast. The specific demarcations for rivers (found in 50-17-35 of the *Code*) are:

Savannah: "the old track bed of the Seaboard Railroad located approximately 1.75 miles upstream from the US Highway 17A bridge;"
Wright and Ashepoo: the old Seaboard Railroad track bed;
New: Cook's Landing;
Coosawhatchie, Tullifinny, Pocataligo and Combahee: US 17;
Edisto: The old Seaboard Railroad track bed "near Matthews Cut Canal;"
Ashley: the confluence of Popper Dam Creek "directly across from Magnolia Gardens;"
Cooper: the confluence of Goose Creek (with special provisions for commercial crab fishing);
Awendaw Creek, North and South Santee, Sampit, Black, Pee Dee, Waccamaw, and Little: US 17;
Inland Waterway: the bridge at Nixon's Cross Road where SC 9 and US 17 intersect.

Clean indoor air act (H.2074, Rep. Kohn). This bill would require public places to have smoking/non-smoking areas, with signs posted to that effect. Persons who smoked in a non-smoking area could be fined between $25 to $100 for the offense. A public place for this bill is defined as "any enclosed indoor area" used by the public. Included are elevators and public transporation.

Fiscal

Increase homestead exemption (H.2026, Rep. Pat Harris). See under "aging," above, for details.

The Big Chill: optional local freeze on ad valorem taxes (H.2029, Rep. Keyserling). This bill would provide counties with the option of providing a freeze on the property tax liability for the elderly, the disabled, and the poor. Persons could apply for a freeze on the tax on their home if they met the following conditions:

1) They receive a homestead exemption;
2) Have a household income of less than $9,000 for a single family household; less than $11,000 for a multi-family household;

3) Have owned the single-family house for at least three years, or have been a resident of South Carolina for a least five (Note: the house cannot be worth more than $80,000);
4) Have lived in the house for at least the past eight months;
5) Have established a base year (1985 is the base year for those disabled or 65 years old before December 31, 1984; for all others, it is the year in which they become disabled or turn 65 years old).

Applications must be made annually by May 2 on special forms, and must include proof that the conditions are met. The county treasurer will make the determination, and if the application is approved the property tax liability is frozen.

Bingo fees to benefit elderly (H.2031, Rep. Pat Harris). See "aging" above.

Marriage license fees to benefit elderly (H.2032, Rep. Pat Harris). Keep looking under "aging."

Government Operations

No state agency to charge for services (H.2007, Rep. Elliott). No state agency would be allowed to charge for its services. One reason this legislation has been proposed is the possibility that the Department of Health and Environmental Control would charge fees for some of its health inspections.

DHEC is the agency to inspect public swimming pools. Because of state budget cuts, the agency had considered charging the pool owners for the inspection. The costs were projected to be in the range of $150 for regular swimming pools and about $500 for special facilities, such as hot tubs and water slides. For DHEC not to charge fees would require an additional $200,000 to $250,000 for its budget, according to news reports.

Primary elections run by state (H.2013, Rep. Taylor). This measure would have party primaries conducted jointly by the State Election Commission and the county election commissions. Funding for the operations would come partly from filing fees paid by candidates (these would be sent to the State Election Commission and placed in a special fund) and from money allocated by the General Assembly.

The commissioners for the individual counties would be chosen by the county's legislative delegation. Appointments would be made by February 15th of each even-numbered year, and the make-up of the commission would have to include a member of the largest political party and the second largest political party. The commissioners would be in charge of conducting the primaries, including selecting and training poll managers (one for each 500 registered voters).

Separate ballots would be prepared for each party holding a primary, and the form of the ballot is prescribed in the proposed bill. Provisions are made for the counting of ballots and resolution of protests. Protests would be heard by the commissioners, along with persons previously designated by the parties holding primaries. Decisions at the county level could be appealed to the State Board.

This bill would not affect parties who wanted to hold presidential primaries, nor does it cover municipal primary elections.

Federal funds and the State Treasury (H.2020, Rep. Aydlette). At present, federal funds coming into South Carolina are deposited into the State Treasury, and then disbursed to the appropriate agencies and organizations. This would exempt law enforcement agencies from that requirement; they would need a review by the Joint Appropriation Review Committee and written authorization from the Budget and Control Board before spending their money.

Public officials and employees appearing before boards, agencies and commissions (H.2036, Rep. Kirsh). By amending existing sections of the *Code*, this legislation would prohibit a member of the General Assembly from appearing before the Public Service Commission, the Dairy Commission or the Insurance Commission in a matter concerning rate setting or price-fixing. In addition, no public official or public employee would be permitted to represent a client for pay before any agency, board or commission whose members are elected or appointed by a body of which the official or employee is a member. (Example: the General Assembly elects or appoints members of a number of boards, agencies and commissions.) The exception to this rule: court appearances.

Freedom of Information (H.2048, Rep. Limehouse). The "Freedom of Information Act" of 1976 is sometimes known as the "Sunshine Act," because it was supposed to shed light on activities and decisions of public boards, agencies and commissions. Recently the University of South Carolina decided to withhold certain information relating to salaries, expenses, gifts and other activities. Some lawmakers felt that this information (much of it seemingly about public money spent by a public institution) should be available.

This bill would expand the amount of information freed up by the "Freedom of Information Act." Presently, the salaries of persons "below the level of department head" do not have to be revealed; this bill would change that to a specific dollar figure: salaries of employees making less than $20,000 per year would not have to be revealed. (But salary schedules showing pay scales for each level would still have to be provided.)

The bill would allow certain exemptions to remain: trade secrets; personal information whose disclosure would amount to "unreasonable disclosure of personal privacy;" and reveling the names of informants and certain other facts used by law enforcement.

Persons who make gifts to a "public body" (most often a college or university) could still remain anonymous, if they so specified when making the gift. However, "only information which identifies the maker may be exempt from disclosure." This would seem to mean that the amount of the gift would be public knowledge.

Finally the bill would strike a section which permits a public body to withhold information. Currently, three-fourths of the governing board of a public body can vote not to disclose information, if they conclude that "the public interest is best served by not disclosing" the information. This bill would eliminate that option.

Bars and churches (H.2052, Rep. Lockemy). Presently the *Code* requires that any establishment seeking a license for on-premise consumption of alcoholic beverages must be a certain minimum distance from churches, schools and playgrounds. Within the city limits, the proposed bar must be at least three hundred feet away; outside the limits, it must be a minimum of five hundred feet. This bill would allow churches to waive this requirement in writing.

And how is this distance computed, anyhow? According to the *Code*: "Such distance shall be computed by following the shortest rout of ordinary pedestrian vehicular travel along the public thoroughfare from the nearest point of the ground in use as part of such church ...."

Recall elections (H.2058, H.2059). These bills propose amending the State Constitution to allow recall of public officials—including judges and members of the General Assembly. Reasons for recall: physical or mental lack of fitness, incompetence, violation of the oath of office, official misconduct, or conviction of a felony.

To start a recall, voters would have to sign petitions asking for a recall election. Percentages required: 10% for state offices; 15% for county offices or state-district offices (General Assembly); and 20% for office holders in municipalities, special purpose districts or school districts. If enough voters sign within a three-month period, an election must be held to determine the fate of the incumbent.

Highways, Byways, Airways and Safety

Motor vehicle liability insurance (H.2024, Rep. Hayes). Nowadays the minimum required insurance coverage for a motor vehicle is $5,000 for any single accident. H.2024 would double that, requiring a minimum amount of $10,000.

Special license plate for Purple Heart recipients (H.2035, Rep. J. Bradley). This bill would allow those who received the Purple Heart to display a special license plate on their motor vehicle.

Reduced traffic fines for wearing seat belts (H.2040, Rep. Rudnick). If a person is stopped for traffic violations under Chapter 5 of Title 56 ("Traffic Regulations") and is wearing a seat belt at the time, then there can be a 25% reduction in the fine and points for that offense. The bill would require that the uniform traffic tickets have a place to mark whether a seat belt was being worn.

Handicapped parking zones (H.2042, Rep. Rudnick). This measure proposes increases in penalties for persons parking illegally in handicapped parking zones and spaces. The first offense would bring a fine of not less than $25, but not more than $100. A second offense would merit at least $50 in fines, but not more than $100, or thirty days in jail. For third and subsequent offenses--some people just never learn--the minimum fine would be $100; the maximum would be $200, and in addition, a thirty-day sentence could be imposed.

Automobile registration requirements (H.2043, Rep. J. Rogers). In order for a person to receive a certification of registration, proof of insurance would be required under this bill. The owner would have to present the name of the auto insurance company, the name of the agency, the ID number of the policy, and its effective dates.

Flying Under the Influence (H.2050, Rep. Kirsh). This bill would make it illegal to operate an aircraft or act as a crewmember of an aircraft if a person's performance is impaired by drugs or alcohol. Specifically a person could not operate or be a crewmember:

1) Within 8 hours of consuming "any alcoholic beverage;"
2) While under the influence of alcohol;
3) While using a drug that affects the faculties "in any way contrary to safety."

A person suspected of being under the influence would have to be tested. If found guilty, a person could be fined $200 and sentenced to between 48 hours to 30 days in jail--or both. In addition, the Federal Aviation Administration must be notified within ten days of the conviction.

Law and Justice

No "wrongful birth" suits (H.2008, Rep. Fair). This measure would prohibit the bringing of a "wrongful birth" suit. In such suits it is alleged by the plaintiff that, under a certain situation, a child should not have been born, and that the defendant either took the wrong action or took no action to prevent that birth.

As reported in *Legislative Update* last year, when similar legislation was introduced, under a "wrongful birth" suit, the plaintiffs argue that there has been a blunder or mistake--usually by a medical doctor--with some procedure such as a genetic test, a sterilization operation, or so forth. This mistake then leads to an unwanted pregnancy. Such suits generally seek compensation for both emotional distress for the parents and funds necessary to care for the child.

An example is the case of parents who had already had two daughters born with a disfiguring hereditary disease. Frank, the husband, went to an urologist and had a vasectomy; nevertheless, a little while later, his wife became pregnant, and later gave birth to their third daughter, who had severe neurological problems and was also diagnosed as mentally retarded.

In such a situation, many people would argue that the suit is really just another malpractice case. Others, however, see serious philosophical implications for the right to life of individuals.

"Chop-Shops" outlawed (H.2015, Rep. McLellan). Legislation on this topic was also introduced last session in the South Carolina General Assembly, and has become a topic for legislation considered in many states.

According to some studies, there are more than one million reported motor vehicle thefts each year in the country. Over fifty percent of all reported larcenies are of motor vehicles. According to other sources, costs of motor vehicle thefts in 1981 totaled $2.7 billion.

Increasingly sophisticated methods are being used by criminals involved with motor vehicle theft. One is the "chop shop," the criminal garage that specializes in taking stolen automobiles apart, grinding down or otherwise erasing serial numbers, and selling the assorted parts and materials. This bill is aimed at dealing with that problem.

Cruelty to animals (H.2021, Rep. Harvin). This bill would expand the *Code* section dealing with cruelty to animals by including failure to provide humane treatment or veterinary care as instances of cruelty. Penalties would be increased: instead of 30 days in jail, up to one year; instead of a $100 fine, up to $1,000.

Use of "deadly force" by resident (H.2025, Rep. Harvin). Traditionally, the law expects that the amount of force used by a person in his or her defense be appropriate to the danger. This bill would establish conditions under which a person is justified in using "deadly force" in protection of a residence. ("Deadly force" is that which is likely to cause death or serious bodily injury.)

Use of such force would be justified by a person if someone broke into the home "in a violent and tumultuous manner, surreptitiously, or by stealth," a combination that seems likely to include most break-ins; or if the person "reasonably believes" that the entry is made to commit a felony.

The bill would establish these standards for the use of deadly force in both criminal and civil cases, which should preclude the situation where a burglar sues a homeowner for "excessive use of force."

Junior G-Men (H.2044, Rep. Hayes). This bill would waive the punishment meted out to minors who purchase alcoholic beverages if those intrepid minors are acting as agents for law enforcement agencies.

SLED protection (H.2047, Rep. Limehouse). SLED can provide guards and other protection to public officials or their families who receive threats. This bill would limit that protection to 72 hours; after that time, continued protection would have to be approved in writing by the Governor.

Jurors and juror selection (H.2053, H.2054, Rep. Kirsh). The first bill proposes a constitutional amendment that would delete the somewhat vague requirement that our jurors be of "good moral character." Instead, the requirements would be residence in South Carolina, and other qualifications as the General Assembly might prescribe.

The second bill would have the county jury rolls to be taken from a list provided each November by the Highway Department (rather than from the list of registered voters, as is now the case). In counties which have a city of 70,000 or more, one name in three would be selected; in other counties, two names out of three.

See page 15 for more information on the same or similar requirements in other states.

Children and pornography (H.2072, Rep. Fair). This measure aims at strengthening state laws relating to children and pornography and prostitution, especially the use of children in pornographic materials.

The bill provides a definition of pornography, which is generally material which depicts "in a patently offensive way" sexual conduct specifically defined in the legislation.

Specific provisions are made for the crimes of displaying pornography to minors; disseminating pornography to them; and using them to produce pornographic materials. For displaying pornography, the offense is a misdemeanor which carries a punishment of up to six months, $500 fine or both. Each day that the material is displayed to minors is a separate offense.

For disseminating the material to minors--selling it or distributing it in some fashion--the violation is again a misdemeanor; punishment upon conviction is imprisonment for up to two years, a fine of no more than $2,000, or both.

Using minors to make pornography (which includes the whole gamut from allowing them to perform to filming or photographing the activities) is a felony. There are two divisions, first and second degree. For first degree, a minimum of three years and a maximum of ten years in prison is the sentence, and no part of the minimum sentence may be suspended nor is the person eligible for parole until that minimum is served. For second degree, the sentence is at least two years (or no more than six years) and again, no suspension of the minimum sentence.

Promoting the prostitution of a minor is a felony with a sentence of three to ten years, with no suspension or minimum sentence and no parole until that sentence has been served.

Under the terms of this legislation, all equipment which is used to produce these obscene materials can be seized by the law enforcement agency making the arrest, and ordered forfeited by the court in which the conviction was obtained.

Finally, film processors who are asked to develop film of minors engaging in sexual activities must report this to the appropriate law enforcement officials--that is, those in the state, county or municipality where the film came from.

Labor, Commerce and Industry

Unemployment compensation and separation pay (H.2006, Rep. Elliott). This bill would make unemployment compensation not available, or reduced in amount, for persons who are receiving separation pay from their former employers. Such pay would include wages in place of notice, terminal leave pay, or other payments related to dismissal. If the separation pay is less than the unemployment benefits due, then the benefits may be received, but are reduced by the amount of the separation pay.

Juries and jurors: How they're selected

Legislation has been introduced to use the list of persons with drivers licenses as a pool from which to draw juries. An interesting comparison can be made between states, showing just what sources they use to gather their juries. The states which use the drivers' license list method are marked in CAPITAL LETTERS.

SELECTION OF TRIAL JURY POOL — SOURCES USED FOR THE MASTER LIST

STATE	SOURCES USED FOR MASTER LIST
ALABAMA	Voter Registration list, Telephone Directory, Drivers' license list, City Directory, Utility customers, Other tax rolls, Census, Civic organizations
ALASKA	Voter Registration list, Drivers' license list, State income tax list, List of persons with trapping, hunting or fishing license
Arizona	Voter Registration list
Arkansas	Voter Registration list
CALIFORNIA	Voter Registration list, Drivers' license list
COLORADO	Voter Registration list, Telephone directory, Drivers' license list, City directory, Utility customers, State income tax list, Other tax rolls, Census
Connecticut	Voter Registration list, City directory
Delaware	Voter Registration list
Florida	No particular master list is used

Georgia	Voter Registration list, State tax digest, personal acquaintance
HAWAII	Voter Registration list, Drivers' license list, City directory, Utility customers, Other tax rolls, Census
IDAHO	Voter Registration list, Drivers' license list, City directory, Utility customers, State income tax list
Illinois	Voter Registration list
Indiana	Voter Registration list, Other tax rolls
Iowa	Voter Registration list, City directory
Kansas	Voter Registration list, Census
Kentucky	Voter Registration list, Other tax rolls
Louisiana	No particular master list is used
Maine	Voter Registration list
Maryland	Voter Registration list
Massachusetts	Voter Registration list, State income tax list
Michigan	Voter Registration list
MINNESOTA	Voter Registration list, Telephone directory, Drivers' license list, City directory, Utility customers, Other tax rolls, welfare recipients
Mississippi	Voter Registration list
MISSOURI	Voter Registration list, Telephone directory, Drivers' license list, Other tax rolls, public records
Montana	Voter Registration list, Other tax rolls
Nebraska	Voter Registration list, Other tax rolls
Nevada	Voter Registration list
New Hampshire	No particular master list is used
New Jersey	Voter Registration list
New Mexico	Voter Registration list

New York	Voter Registration list, Telephone directory, City directory, Utility customers, Other tax rolls, Volunteers
North Carolina	Voter Registration list, Utility customers, Other tax rolls
NORTH DAKOTA	Voter Registration list, Telephone directory, Drivers' license list, City directory, Other tax rolls
Ohio	Voter Registration list
Oklahoma	Voter Registration list
Oregon	Voter Registration list, City directory, Welfare recipients
PENNSYLVANIA	Voter Registration list, Telephone directory, Drivers' license list
Rhode Island	Voter Registration list
South Carolina	Voter Registration list, Volunteers
South Dakota	Voter Registration list
TENNESSEE	Voter Registration list, Drivers' license list, Utility customers
Texas	Voter Registration list
Utah	Voter Registration list
Vermont	Voter Registration list, Telephone directory, Census
Virginia	No particular master list is used
Washington	Voter Registration list
West Virginia	No particular master list is used
Wisconsin	Voter Registration list
Wyoming	Voter Registration list

State Court Organization 1980, published by the National Center for State Courts, Williamsburg, VA

Lotteries: In the News, on the Ballot

Background: To bet or not to bet?

Whether state legislatures approve or reject lotteries, the games remain in the headlines. The pros and cons of a possible state lottery will likely be discussed during the 1987 session of the South Carolina General Assembly. Many of those issues have recently been raised, discussed, and in some cases resolved, in other states.

At present, twenty-two states and the District of Columbia operate lotteries, and estimates of their revenues range as high as $10 billion annually. The recent elections saw the approval of lottery referenda in four states, and rejection of the games in one.

The Florida referendum: Miami advice?

Florida voters approved a proposal that will permit a statewide lottery. The largest margins in favor of the plan came from the counties of Dade (home of Miami), Broward, and Palm Beach, but support was general over the state. The legislature now has the task of setting up the lottery, including the administrative staff to operate it. According to *From the State Capitals* it will take nine months to a year to organize the game.

There was opposition to the lottery plan, and although those against the games lost in the November election they hope to get the legislature to limit the money spent advertising the game, and perhaps repeal the bill down the road. Arguments against the lottery were familiar: it is a regressive tax which hits hardest on the poor; it is an inefficient method of raising funds (45¢ of each dollar raised goes for prizes, advertising and operating expenses), and it is unconstitutional. The Florida Supreme Court struck down the third argument; the other two might be determined during the lottery's operations.

Lottery supporters win three out of four

Montana voters said yes to a lottery plan, with the projected revenue to end up as property tax relief. Funds will be earmarked for the state department of education, which currently is funded mainly from property taxes.

Residents of Idaho approved a bill allowing creation of a state lottery commission, but details remain to be worked out—such as where any lottery proceeds will go, and whether the game is legal to begin with.

In the report published in *From the State Capitals,* the Deputy Attorney General of Idaho is quoted as saying a constitutional challenge is expected, "since the state constitution has a provision saying legislators may not authorize a state lottery." Yep—that sounds like a definite basis for a court case.

South Dakota and Kansas, on the other hand, seem to be approaching the topic in a slightly more logical fashion: voters there authorized constitutional amendments to allow the state legislatures to create lotteries.

Finally, not all lottery supporters were victorious. The voters in North Dakota rejected the game in a state-wide contest.

Meanwhile, back in South Carolina

The lottery issue has been debated in the South Carolina General Assembly during recent sessions. One proposal has been to place the question on a state-wide ballot (as was the case in the states noted above) and let the people decide. Since a state lottery would require a constitutional amendment, it's certain that both the supporters and opponents of lotteries will have plenty of time to present their arguments—to the House, the Senate, and then the general public.

The Original Lords Proprietors

On page 6 there was a question about the original Lords Proprietors of Carolina. These were the eight men to whom Charles II granted tracts of land in the New World, largely in recognition of their personal service to him. The date: March 24, 1663 (1662 old style, before the calendar was changed.) Their names and titles:

Edward Hyde, Earl of Clarendon; George Monck, Duke of Albemarle; William, Lord Craven; John, First Baron Berkeley of Stratton; Anthony Ashley Cooper, Earl of Shaftesbury; Sir George Carteret; Sir William Berkeley (John's younger brother); and Sir John Colleton.

(Note: *Legislative Update* must thank the staff of the State Library for help in gathering these names. Without their help, the answer would not have been so readily available!)

"Tort Reform": Background

Background

Higher rates for liability insurance; insurance policies that are harder to buy in the first place; medical malpractice suits; claims that juries are awarding excessive damages in court cases; counterclaims that such awards are rare, and generally fit the damages caused; groups formed to push for "tort reform" while other groups say the system is fine and should be left alone. What's going on here?

A Greenville example

What's going on is a debate over that aspect of our legal system which regulates tort claims--essentially, lawsuits for damages caused by the negligence, incompetence or fault of others. Some people say tort claims work well, providing injured persons with monetary compensation for their harm. Others point to stories such as this, from Greenville, South Carolina:

A 63-year-old woman was walking in a hospital parking lot when she slipped on a sweetgum tree ball and fell. She broke her left wrist, and bruised her left elbow, leg, knee and hip. She sued the hospital and its landscaping firm, claiming they were at fault for having the sweetgum tree next to a stairwell in the first place, and second for allowing the sweetgum balls to accumulate around the tree.

The woman was awarded a $75,000 judgment. The case was appealed, and a circuit judge threw out the earlier judgment, saying it would be the "death knell" for business landscaping. Judge Bill Traxler is quoted in newspaper accounts as saying: "If this, in itself, be negligence, then this case will be the death knell of every tree and bush on business property that drops anything on the ground upon which a person may fall, whether it be a sweetgum ball, a nut, an acorn, a berry, or yes, even leaves."

The woman and her lawyers disagreed with the judge's decision. Injuries had occurred, and the cause seemed to them clearly the responsibility of the hospital and its landscape company. Is $75,000 really excessive payment for the woman's injuries and suffering?

In a nutshell, this is what the great "tort reform" battle is about. It includes a number of other aspects, such as higher rates for liability and malpractice insurance, the liability insurance "crunch," and the role state government might play in adjusting and regulating both the insurance and legal systems.

Research reports on the issue

This research report will focus on the general topic of "tort reform," giving House members a basic background in the issue--what's at stake, what the sides are, what changes and legislative actions have been suggested. In our next research report on the topic, we'll look in more detail on the tort reform issue in South Carolina, and what specific possibilities are available for the Palmetto state and its lawmakers.

The related issues of insurance reform, especially liability insurance, and medical malpractice, will be discussed in separate research reports, as those issues come up in the General Assembly.

What are torts, anyway?

The word itself, *Tort,* comes ultimately from Latin--via Middle English, which adopted it from Middle French, which in turn had brought it over from Middle Latin. The adjective *tortus,* meaning "twisted", is formed from the Latin verb *torquere,* "to twist." Perhaps not surprisingly, the word is linked to such lexical items as "torture," and "torturous," and "tortuous," all involving the concept of twisting and turning, or of activities which are involved and complicated.

In law, a *tort* is a wrong, an injury. In the words of the dictionary, it is "a wrongful act for which a civil action will lie except for one involving a breach of contract."

Is there a "tort suit crisis?"

According to some groups, particularly those representing the insurance industry, and businesses which must buy liability insurance, there is a "litigation explosion" going on, with suits being lodged left and right. The "crisis" has made the cover of *Time* magazine, that institutional taker of the nation's pulse, and countless articles have appeared in newspapers and journals.

The result of such an explosion: excessively high damage awards which in turn cause higher insurance rates, which end up costing all of us.

Not so, say the other side in this fracas; the other side being, for the large part, trial lawyers and plaintiffs. First, there is

no "litigation explosion." Second, people are entitled to recover damages through the courts as part of our legal heritage.

Countering the *Time* piece, supporters of this side point to an article in *USA Today* last April, which concluded that a study of state courts prove that litigation is not exactly exploding, at least not universally. The National Center for State Courts looked at records across the nation, and compared changes in tort filings with changes in population. These results, shown below, do show some increase in some states in tort claims, but downplay the "big bang" theory of tort litigation:

State	Percentage Change in Filings	Population
Kansas	- 11	+ 2
Idaho	- 1	+ 4
Alaska	+ 31	+ 21
Hawaii	- 8	+ 6
Ohio	- 13	0
(Partial reporting on following)		
California	+ 20	+ 6
Colorado	- 17	+ 7
Florida	+ 27	+ 8
Maine	+ 9	+ 2
Montana	+ 4	+ 4
New York	- 4	+ 1
North Dakota	+ 7	+ 4
Tennessee	- 2	+ 2
Texas	+ 19	+ 8
Washington	+ 14	+ 3

(Source: *State Policy Reports* 6/10/86)

The extent of the "litigation explosion," then, is probably determined by the perspective of the observer.

Frequently suggested measures for "tort reform"

When the issue of tort reform comes up, there are several measures which are most often suggested to change the legal system. Some say these changes will be improvements; others, disasters. A brief summary of them follows.

Establish limits on non-economic damages. "Pain and suffering," or "mental anguish" are frequently claimed by injuries persons, who ask juries to award monetary compensation for these ill effects. The problem, say some, is that it is difficult to assign a dollar amount to these non-economic damages. Just how much is pain and suffering worth, anyway? The awards will vary from jury to jury, and high awards will result in increased insurance premiums, according to those who want a change in the system.

A possible solution: set a cap, or limit, on the awards. This makes the system more predictable, and hopefully more rational. It would also allow insurance companies to better calculate their potential losses, and adjust rates accordingly.

On the opposing side, there are those who argue that a cap on non-economic damages is unfair to the injured person. Suppose someone is made a quadriplegic, or permanently burned and disfigured because of a preventable accident? Putting a limit on the non-economic damages would mean that the plaintiff could recover only a small fraction of actual pain and suffering.

Still, a number of states are moving to impose such caps. California placed a $250,000 cap on non-economic awards for medical malpractice suits; the law was upheld by the US Supreme Court in 1985. Other states that have recently adopted or are considering measures of this sort: Florida, which set a $450,000 limit on non-economic damages; Michigan, which is considering a limit of $225,000; Massachusetts, which put a limit of $500,000 on pain and suffering awards in July, 1986; and Wisconsin, where a study group appointed by the Insurance Commissioner is recommending a cap of $500,000 on non-economic damages.

One state where you <u>won't</u> see such legislation unless the constitution is changed is Arizona. The state's constitution says clearly that: "The right of action to recover damages for injuries shall never be abrogated, and the amount recovered shall not be subject to any statutory limitation." An attempt to amend this portion of the constitution recently failed.

<u>The end of punitive damages</u>. A frequent target of those who want to reform the tort system are the "punitive damages" which can be awarded. These damages are those given in addition to compensatory damages, and their purpose is to punish defendants for malicious acts.

Some supporters of tort reform want to abolish punitive damages altogether; others want them strictly limited; and still others would like to see the damages paid to the state government, rather than to individuals. If punitive damages are retained, say some, they should be harder to impose, with a greater responsibility of proof resting on the plaintiff in any suit.

On the other hand, an argument can be advanced <u>for</u> punitive damages. Such damages are imposed both to punish and to deter--specifically, to deter corporations and individuals from consciously disregarding safety. An example used by those who support this argument: Ford Automobile deliberately failed to make adjustments in its Pinto gas tank, choosing to risk possible law suits rather than incur additional manufacturing costs. Since there are no effective criminal penalties to impose on the Ford executives who made this decision, eliminating or restricting punitive damages would increase the likelihood that safety would be further disregarded in the future.

A possible third way exists between these two positions: punitive damages might be retained, but they would be paid to the state general fund, rather than to the plaintiff. In this fashion, the negligent individual or company would be punished, but plaintiffs and their lawyers would not be encouraged to pursue suits in the hope of huge punitive awards.

Limiting contingency fees. In many liability cases lawyers operate using a "contingency fee"--that is, they get paid only if they win the case. In a successful suit, the lawyer's share is one-third; in an unsuccessful case, the lawyer's share is zero (and he or she may have to pay expenses of the suit as well.)

Opponents of this system say it entices lawyers to encourage liability law suits, and law suits with potential for huge awards. If a jury returns damages of, say, three million dollars, a third of that is a cool million. No wonder so many suits are being filed. "Limit the amount lawyers can receive!" goes the battle cry. One popular figure bruited about is 10% of the total award.

Supporters of the contingency fee system claim that it is often essential to individual cases and not harmful to justice in general. They point out that many average persons could not afford to hire a lawyer on their own--not when the hourly fees range anywhere from $100 on up. Unable to hire an attorney, the average person injured because of others could not have his day in court; in such cases the contingency fee system allows wider access to the court system.

As for the percentage of the award that goes to the lawyer: supporters of the system deny that the money award alone is motivation. Of course lawyers want to win--and therefore they are unlikely to take weak cases, no matter how much the plaintiff is asking for. After all, the lawyer will still have to prove the case to a jury, and if the plaintiff's lawyer is defeated in court, he or she stands to lose money. (And, some point out, the defendant's lawyers are not being asked to limit their fees.)

If contingency fees are limited, one proposed method is to adopt mandatory sliding fee schedules. California, for example, has put in action a system which permits a lawyer to take a 40% fee when damages are $50,000 or less; 33.3% for an additional $50,000; 25% on the next $100,000; and 10% on all damage awards above $200,000. This system was argued before the United States Supreme Court in 1985, which upheld the statute enacting it.

Eliminating joint and several liability. "Joint and several liability" is a doctrine that makes certain an injured person will get paid by someone. Joint and several liability holds that all defendants who are responsible for an injury are liable for the injured person's damages. The injured person can recover from whichever defendant or group of defendants he chooses, and it's up to the defendants to work out among themselves who must pay how much.

According to opponents, this doctrine encourages plaintiffs to go after the defendant with the "deepest pockets" (the most money) regardless of proportionate share of fault. Many would like to see each defendant responsible for only part of the damages he or she caused. In such a case, for example, if more than one defendant is involved, no single defendant could be liable for an injured person's full damages.

Making suits harder for plaintiffs. There are several fashions in which tort law suits could be made harder for plaintiffs to win in court, or more difficult to collect large awards. The three most popular proposals:

1) Abolition of the collateral source rule. The collateral source rule keeps the jury in the dark over compensation the plaintiff might receive from other sources. Thus, defense lawyers can not ask for a low award because a plaintiff is already receiving money from an insurance company, or another plaintiff, or what-have-you. Some people want juries fully informed of any and all payments to a plaintiff.

2) Modify statutes of limitations. Lawsuits are often filed years after an alleged negligent act or incident occurs. In some states, a time limit is set, and suits must meet that limit or they cannot be filed. Just last year the South Carolina General Assembly set a statute of limitations for architects and engineers--suits against them must now be filed within 13 years of a building being completed. Before the change, there was no limit.

Obviously, setting a statute of limitations will reduce the number of lawsuits which can be filed. Some would object to this, saying certain actions are not shown to be harmful until many years later--for example, the dangerous side effects of working with asbestos were not apparent for decades (at least to those who suffered from them). All the more reason to set a limit, might be the response; it is unfair to hold a person to standards set years later, and which were not prevalent in the industry earlier.

3) Changing tort suit procedures. The typical tort lawsuit with a huge damage award is one which has gone before a jury. Therefore, some have proposed that a system of arbitration could be used in many cases to resolve claims, instead of arguing them before a jury. Arbitration is especially proposed for cases that are not very complex, and which have smaller claims. But then, some observers say, what happens to a person's right to trial by jury?

Another procedural change could be to have sanctions against frivolous claims, or invoking penalties for plaintiffs who make "last minute" settlements after they have taken the case all the way to the jury selection stage. (A form of legal bluffing, we must assume.)

Finally, one other change: no more lump sum payments. These payments, some aver, often present a financial hardship to the defendant, without necessarily helping the plaintiff. Some have suggested a system of structured payments over a number of years. "Sure," say critics of this idea, "keep the payments low and stretch them out long enough and the plaintiff dies and the defendant gets off relatively cheap."

Recent activities in other states

As noted above, many states have been taking action in the area of tort reform during 1986. The suggestions listed above are in the forefront of activities in changing civil justice, or tort, law. A total of 41 of the 50 states took some action in tort law during 1986; these changes ranged from adjustments to sovereign immunity (as in South Carolina) through enactment of statutes of limitations (again, as in South Carolina). A quick survey of nine key areas is found in the following chart. (Note: these changes in tort claims are exclusive of those made specifically for medical malpractice suits.)

STATE ACTION ON TORT LAWS, 1986

Modify Sovereign Immunity
Connecticut, Georgia, Hawaii, Michigan, Mississippi, South Carolina, Wyoming

Modify Joint and Several Liability
Alaska, California, Colorado, Connecticut, Florida, Illinois, New Hampshire, New York, Utah, Washington, West Virginia, Wyoming

Modify Collateral Source
Alaska, Colorado, Connecticut, Illinois, Indiana, Massachusetts, Michigan, Minnesota, New York

Limits on Non-Economic Damages
Alaska, Colorado, Florida, Kansas, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, Washington

Provide for Structured Payments
Alaska, Connecticut, Florida, Iowa, Maine, Michigan, New York, South Dakota, Utah, Washington

Penalties for Frivolous Suits
Arizona, Connecticut, Georgia, Indiana, Michigan, Minnesota, Missouri, New Hampshire, New York, Oklahoma, Wyoming

Modify Statute of Limitations
Colorado, Connecticut, Maine, South Carolina, Virginia

Modify Attorney Contingency Fees
Connecticut, Idaho, Maine, Massachusetts, Montana, New Hampshire, Wisconsin

Limit Punitive Damages
Colorado, Florida, Minnesota, Mississippi (but vetoed by Governor), New Hampshire, New Mexico, Oklahoma

(Source: *State Legislatures*, September 1986)

Action is far from over on this issue. South Carolina is not the only state with a coalition or group formed to press for liability and/or tort law changes. In Virginia, the "Virginians for Law Reform" are pressing for limits on pain and suffering awards, having punitive damages paid to the state rather than to individuals, requiring damage payments in installments, and setting limits on contingency fees.

In Delaware, the state chamber of commerce is pressing for elimination of joint and several liability, and consideration of money received by a plaintiff from all sources. In Georgia, the "Liability Crisis Coalition" is making similar efforts, and nationally, the American Tort Reform Association is active.

Conclusion

This research report has given a general overview of the "tort reform" issue, showing that there are those who want changes in the civil action system, and others who are content to have it remain pretty much as it is. Sentiment for change seems to have established itself in many state legislatures, since most have taken some form of action, changing some aspects of their tort procedures.

What does this mean for South Carolina, and for the House of Representatives? Those questions, and others, will be addressed in the next research report: "Tort Reform: The Battleground"